

ALBANY DEMOCRATIC REFORMER.

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(Embodying documents concerning Governmental Reformation.)

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CONSTITUTIONAL REFORM.

"Each generation is as independent of the one preceding, as that was of all that had gone before. It has, then, like them, a right to choose for itself the form of government it believes the most productive of its own happiness—consequently to accommodate to the circumstances in which it finds itself, that received from its predecessors: and it is for the peace and good of mankind that a solemn opportunity of doing this every sixteen or twenty years should be provided by the Constitution, so that it may be handed on, with periodical repairs, from generation to generation, to the end of time, if any thing human can so long endure."—JEFFERSON'S LETTER to Kirchcaval in 1816.

"Every effort, however, to improve our social condition, will meet with the bitter opposition of all who are interested in existing evils. Such has been the history of man from the earliest records to the present time. The necessary remedies of every reformer have heaped upon him in profusion all kinds of misrepresentation, contumely and reproach; but the gross transgressions of delegated power are now so palpable as to have aroused the attention of a patient and long-suffering community. * * * The interests and well being of the great body of the people in every part of the State are identical. Just and equal laws and an economical government shed their blessings alike upon all. The course to be pursued by the advocates of reform is plain. It is, to call things by their right names; to expose past misrule to public reprobation; to turn a deaf ear to calumny, sneers and misrepresentations; to enforce by argument the pressing necessity of Constitutional Reform; and on no occasion to tamper with iniquity or compromise with corruption."—Col. Young's letter to O'Reilly, 1843.

"The Reformer may be assailed with harsh epithets: Men who understand him not, or knowing, seek to pervert his meaning, may mock him with derision, or treat him with scorn. Old theorists who cling to corporations and subsidies on privilege—persons living at the public treasury, aspirants to office, who cherish old abuses rather than hazard a moment's political sunshine—these may conspire for a season to retard his progress in the great cause of constitutional freedom; but his final triumph is as certain as the omnipotence of truth."—Hurlbut, in the N. Y. Eve. Post.

HURLBUT'S ESSAYS.

Several of the Essays on Constitutional Reform, which appeared in the New York Evening Post, under the signature of "E. P. H.," are now collected in this number of the DEMOCRATIC REFORMER. The other numbers will be published in future issues of this paper. The present collection is deemed sufficient to present a general outline of the proposed Reformation. The writer is now well known to his fellow-citizens; for the name of such a writer could not remain long hidden from the inquiries elicited by his admirable essays. We therefore freely used his name in the first number, and now repeat it—ELISHA P. HURLBUT, formerly of Herkimer, but lately of the city of New York. It would be unpardonable in us to refrain from quoting the remarks of the Democratic Review in reference to the Essays which are here partly collected. Let that Review be heard, as a substitute for further preface from us. In a note to the able article on Constitutional Reform in the December number, the Democratic Review says:—"A periodical has been recently established in the city of Albany, entitled the 'Albany Democratic Reformer'—the purpose of which is, to embody all such memorials, speeches and published papers as may from time to time appear upon the subject of Governmental Reform: In the first and only number which has yet appeared, are contained the speeches and letters of several of the most distinguished Reformers in the State, upon this subject. In the next number will appear a series of communications which appeared during the last summer in the columns of the New York Evening Post, upon the same subject, from the pen of E. P. Hurlbut, Esq. of N. Y. city. The clearness and force with which the remedies to our present constitutional system are there presented, would be a sufficient excuse, had we no other, for our declining to enter upon their discussion."

THE DEMOCRATIC REFORMER.

The numbers of this paper have been published at the expense of a few friends of Reform who desire to present an exposition of the views which influence their action on the subject of Constitutional Amendment. The numbers have been principally distributed gratuitously. Some Democrats, however, ordered copies for distribution in their respective neighborhoods, at rates sufficient to cover a portion of the outlay for printing, the only expense charged. The numbers vary in size, as occasion requires—the first number being quadruple the size of this—32, instead of eight pages.

It cannot be expected that all friends of Reform will concur in every position assumed by persons whose speeches, letters and essays are collected in this form. In the general features of the proposed Reform, and in the necessity of a convention, there are probably a general concurrence. Whatever differences exist, discussion will serve to elicit truth.

CONSTITUTIONAL REFORM—PRINCIPLES OF THE MOVEMENT.

It is moved, in various parts of the States, that a Convention be held to consider of a new Constitution. The present constitution is esteemed too small for the mighty state it assumes to protect, and requires expanding. It is old enough to be reverently cast aside—so think multitudes of men—men who do not disregard the wisdom of their fathers, but who cannot help thinking it is a pity, that with all their inheritance of ancestral wisdom as a capital to start with, and more than twenty years of their own experience, they may not be permitted to inquire whether that experience has added to their stock of knowledge; and if it has, why they may not be allowed to incorporate it in their fundamental laws. Has not the age advanced somewhat in twenty years? In the course of that time, have we not had a rich experience of finance, of public and private debt, of trade and tariffs, of laws, both just and unjust? Know we not something of lending the credit of the state—of corporations, of public works, of banks and paper money—of taking private property for public use—that our fathers did not know in 1820?

Never did any generation profit more by their experience than the present; rarely has there been a more active age than the one just past. What plans, what deeds, what antics have been displayed? We have experienced it all. If doing seeing, feeling, and suffering, can make men wise, then why are we not wiser?

No legislature was ever busier than that of New York, for the last twenty years. We have reduced one octavo volume of new laws into yearly use; and have we learned nothing from this extensive practice? We have borrowed money by law, and paid it by borrowing more, until it was discovered that taxation was better; and has taxation taught us nothing? No one ever paid a tax or debt without being a wiser man.

We have created corporations for almost every purpose, until some suppose that nearly all natural functions can be dispensed with—and that indeed every thing, except nursing infants, can be done by artificial persons. Have we not learned wisdom of corporations?

We have taken private property for the use of the state rightfully upon compensation; but there came a railroad and improvement fever, and then

the right of eminent domain was delegated to corporations; then was one citizen compelled by law to sell his land to another; then were men robbed of their gardens, lawns and harvest fields by reckless legislation, and there was no remedy in the courts. Have we no experience here, and ought we not to define and limit, by the fundamental law, the power of the legislature in reference to the right of eminent domain?

We have indulged in special legislation ever since the revolution, and have seen the folly, nay, the wickedness of it. This can be remedied by a constitutional prohibition of all partial laws.—The practice of general legislation would remedy one half of our public evils, and at once annihilate all legislative corruption. Had this practice been followed for the last fifty years, a complete code of just and equal laws would have resulted, and we should have been saved from the enormous public evils through which we have just passed.

It is the doctrine of England that the Parliament is omnipotent. Should it resolve that a subject must walk on all-fours—on all-fours must he walk, or assert his *bipedal* rights by revolution. So is the Legislature of New York omnipotent, except in cases prohibited by the United States and the State Constitutions. Now, the prohibitions are few, very few, and the power to do mischief by haste, ignorance, or corruption, is all but omnipotent. Shall this remain forever? The courts have long lamented the absence of salutary constitutional limits to the legislative power—and all philosophic statesmen have seen the evil of this English doctrine.—Let us demand a constitutional code of prohibition—let it be well digested and elaborately drawn out; but let us have it. The legislature has too often proven to be a foe to human rights—but a convention of the people, never. Over-legislation has been the curse of the country, as every body knows.—There is a way to cure it—and there never was a better time than the present, when its marks are fresh and numerous, and we can readily trace them.

Does this savor of destruction, or of salvation? Is it radical loco-focism, or what is it? Call it what you please—names are nothing. We require constitutional protection of the natural rights of man from rash and wicked legislation. We ask to be left alone—that the laws shall neither help nor hurt us—but protect us only.

We ask that a liberal, a philosophical conservatism pervade the constitution—that rights shall neither be created, infringed, nor destroyed by law—but that they shall find protection, as well from the private as from the official depredator, in the fundamental law of the State. Do we ask too much? We demand that legislators shall be prohibited from plundering the people—and that the legislative body shall be purified of its corruptions by being disarmed, and thus removed from temptations.

The generation of men by whom the present constitution was adopted has passed away. It is well if they were satisfied with it. They had a right to be satisfied with it. We have a right to be dissatisfied with it, and to change it. So says the Declaration of Independence, and so agree all right-thinking men.

Then, what is the objection to a convention? Is it that the people are satisfied with the Constitution? If so, then it will not be changed, and the expense of the convention will be lost only. We presume there are very few who would not cheerfully pay their proportion of the expense in order to see

it proven that the people are satisfied. But suppose they are not satisfied with the present Constitution—what then is the objection? Is it, that the people cannot be trusted to carry out their wishes? Oh, no—that they can safely and readily do.—What then? Is it that their wishes *ought not* to be carried out? Who dare say this? Let us look at the man that says this: he is no true man; not even an enlightened man, who distrusts the people at the present day. He is more than half a century behind the age—a man who has shut himself up in his closet, and studied old theories of government, who clings to all aristocratic prejudice, and is always thinking that the end of the Republic has come! E. P. H.

DEBT AND TAXATION—AND LEGISLATION CURBING ITS OWN POWERS.

The state is groaning under an enormous load of debt: and to pay it we have resorted to direct taxation, in which all honest men rejoice. Every dollar of that debt will be paid—let no man doubt it. There is honor and honesty in the people of this state, and they are prepared for any sacrifice before they will forfeit either. They will bow their backs to the burthen; deny themselves the comforts of life; they will toil, toil on, 'till the last dollar of their debt is paid. We repeat, let no man doubt it. But will the same people be caught again under such a grievous burthen?

Assuredly will they, in spite of themselves, so long as log-rolling legislators, combining sectional interests in one mass and agreeing to vote for each other's local projects, shall be permitted by the constitution to borrow money without any restriction except their own consciences. Their conscience—that is the present limitation. We need something less elastic—some right feature in the constitution to bear up against legislative corruptions; some mandates from the fountain of all political power; a decree from an incorruptible source, that shall control the will of the legislator, and fetter his plastic conscience. This is the point, of all others, where a stern constitutional prohibition is necessary.

The Constitution very rigidly guards the right of trial by jury and religious freedom from legislative invasion; and we esteem even this to be necessary, although there are no two points in which the people and their legislators are more perfectly agreed; and yet we omitted in the Constitution to protect the right of property from unlimited debt and taxation at the will of the legislature. Here is a point in which the people and the legislature have been forever at variance. This is the point, of all others, where the legislators "break through and steal." They could not vote away trial by jury or religious freedom, without immediately incurring a personal curse—but they could burden the people with a debt—they could pledge their honor and their fortunes to an almost unlimited extent, they could reap from it personal and local advantages, they could postpone its payment until the history of the debt should be almost forgotten, and escape all personal inconvenience; and they have done it until the very honor and honesty of the state began to be doubted. Our stocks fell; the public faith became a subject of discussion; men differed in their belief about it; some feared, others hoped, and all doubted. At length the bold question was put—have the people of the State of New York common honesty? That was the question in Wall street; the question on London 'Change; the humiliating question; which was answered by an injured and insulted people by a resort to direct and onerous taxation. But answered it was—and proudly too for a noble state—and answered it is forever.

* It will be seen by the memorials now in circulation, that the Reformers at present only ask the Legislature to allow the People the privilege of voting whether they do or do not want a Constitution. This will cost nothing.]

New York will pay every dollar of her enormous debt. But shall her integrity have no reward?—shall she purchase no good thing by her sad experience? Shall there not spring out of this sacrifice, even at the very altar where she offers up her blood and sweat, some sign, some sure guarantee that such a curse shall not light upon her people again? If not, then will she have suffered in vain. I hope better things—but I expect nothing from the legislature. The legislature will never change the Constitution in this respect. It is sick—too sick to prescribe for itself. We must call in a physician—that great doctor of corrupt legislatures—a convention from the people, charged with legislative cure, having a written prescription from the Constitution for purifying the legislative blood, a specific against enormous debt and onerous taxation.

The legislature will never amend the Constitution by limiting their own power to borrow money. It is not probable, in the nature of things, that a selfish body should voluntarily tie its own hands, and relinquish its power to prey upon the whole body of the people by borrowing money for local benefits. They will not freely forego such a fat opportunity. Will the ingenious thief assist to bolt your doors securely? Does the wolf regret that the lamb has not greater speed, or better defensive faculties? Will the legislature pass Mr. Loomis's resolution? Never. It has been thrice tried, and has thrice refused. Both theory and experience prove our assertion, that this correction will never proceed from the legislature. It must come fresh from the source of all political power, or it will not come at all. E. P. H.

PROGRESS OF THE MOVEMENT—AND THE OBJECTS OF THE REFORMERS.

There are strong heads and warm hearts embarked in the cause of constitutional reform. Associations are forming in various parts of the State, and our fellow citizens are pledging themselves never to cease from their labors, until the great and good cause shall have triumphed.

Their motto is, "Right and Reform," and their aim is the highest conservatism. Will they not go back to first principles, and build their theory of human rights upon the constitution of the human mind? It is from that divine structure that all rights proceed, they being the creatures of its impulses, and all human legislation for their protection must be guided by an enlightened interpretation of the laws of mind. When we shall know the nature of man, we can readily define and protect his rights. That knowledge will beget full confidence in his capacity for self-government, since we shall find that the Creator has filled the human mind with moral restraint and guidance, and ennobled man, above all created beings, by ordaining him sole image of his own benevolence and justice. The divine being having thus legislated for the human race, our duty is to interpret, and not to invent laws, for the moral government of man. Rights flow from the mere existence of a human being; and can neither be created and destroyed by human laws, but can only be by them declared and protected. The State cannot require of any man a surrender of his natural rights; nor can it confer upon him rights not resulting from his mental constitution. Rights and privileges cannot exist together; the former must finally prevail over the latter.

Human laws being made for the declaration and protection of rights, ought to be equal and impartial, since the subjects upon which they operate are common to all; and all limited and partial laws are unjust, and inevitably lead to corruption in the

State. This is all mere common-place remark to those who have reflected upon the true theory of human government; but we propose to hold these and such like truths to the people, so long as they fail of reducing them to practice.

A word more of the Reformers. If we understand their principles, they are grounded upon the laws of the human mind—and can as safely be confided in as the laws of nature. They hold man as he exists in this country to be fully capable of self-government, and they would assert the democratic principle wherever it can obtain. In carrying this into practical effect, they would restore to the people of the towns and wards and of the counties whatever of the powers of government can be exercised within those limits.

They do not invite office—but adopt it from necessity; and regarding it as an evil and a burthen, they would be cautious to see that none but a function clearly public is clothed with office.

They aim at distributing among the people from whom it has been improperly withdrawn, a large share of the power of government which is now concentrated in the hands of the Governor and the legislature.

They allege that experience has proved it necessary to guard against legislative encroachments, by adopting a constitutional code which shall assert the true theory of human rights, and shall prohibit the legislature by minute and full specifications from infringing upon them. And among other things, the constitution ought to prohibit the legislature from contracting debts without the direct consent of the people through the ballot boxes; from delegating the right of eminent domain to corporations in the manner heretofore practised; from changing the remedies for the enforcement of rights to any such extent as in the least to impair the right itself; from granting special charters; from conferring special privileges; from creating offices; from granting bounties to particular pursuits; and from interfering with private business.

The Reformer's theory of government is simple; he regards it as purely a moral concern; he would legislate by general laws for the simple protection of rights; he would simplify the laws and legal proceedings, and expedite the administration of justice.

Are not these objects worthy of the best efforts of the most gifted and patriotic men in the state?—Are not the labor, the wealth, the justice of the state deeply concerned in the advancement of this reform? The objects aimed at, are as imposing as those which moved the first revolution; and those who rise and those who fall in this great struggle for equal justice and constitutional freedom, will be remembered in all future time with the respect and gratitude which posterity always awards to noble exertions in the cause of humanity.

We say then to our fellow citizens, organize in every town and ward in the state; lift the banner of Constitutional Reform; and give no peace to the betrayers of your liberties, the defenders and apologists of existing abuses, until you find in the constitution full provisions against any encroachment upon our rights and liberties.

The reformer may be assailed with harsh epithets: men who understand him not, or knowing, seek to pervert his meaning, may mock him with derision, or treat him with scorn. Old theorists who cling to corporations and subsist on privilege, persons living at the public treasury, aspirants to office, who cherish old abuse rather than hazard a moment's political sunshine—these may conspire for a season to retard his progress in the great cause of constitutional freedom; but his final triumph is as certain as the omnipotence of truth. E. P. H.

REFORMS NEEDED IN THE JUDICIARY.

A convention is necessary to re-model the Judiciary of the state. The present constitution organized a judicial establishment which was probably adequate to the wants of the state at the time of its adoption. As well as we are informed, it had not, at the beginning, any surplus energies beyond the earliest demands upon its labor.

It is safe to say that, twenty years ago, the population and wealth of the state tasked our Judiciary to the full extent of its capacity. The constitution provides for a Supreme Court, consisting of three judges, who sit at the bar and hear causes coming up from the inferior tribunals; eight circuits of Law and Equity, with one judge for each, upon whom is devolved the double capacity of Circuit Judge and Vice Chancellor; a Court of Chancery, over which a side judge presides; and last of all, the Court for the Correction of Errors, consisting of the Senate, the Judges of the Supreme Court, and the Chancellor.

Now, suppose this to have been a judicious organization, (which many doubt,) and that it was merely adequate to the wants of the state twenty years ago, how stands the case now? The population and the wealth of the state have nearly doubled in the last twenty years; and in the first circuit, and we believe also in the eighth, have trebled in the same period. This alone, without observing our courts, would enable us to determine that the Judiciary would be altogether inadequate to the present wants of the state, since legal business may fairly be supposed to increase in a ratio very nearly corresponding with the increase of population and wealth. But we have no occasion to theorise upon this subject, since facts set this question at rest.

The Chancellor, although distinguished for industry, is overwhelmed with business, and years must elapse before his calendar will be cleared of causes, which meanwhile go a begging from one Vice Chancellor to another to be heard and decided. The Judges of the Supreme Court, with singular industry and ability, have at length overcome the embarrassments of their calendar, but they have been quite overtaxed. The Court of Errors has a mass of business before it which will not be disposed of in a very long time. The calendars of various Circuit Judges have been choked up for years; we remember when a cause upon the calendar of the First Circuit was never expected to be tried; and notwithstanding the great energy and ability of the present Circuit Judge, his calendar rises to three hundred causes at the present time. How long he can endure this work we know not, but hope he may not, like his distinguished predecessor, become the victim of his judicial labors.

The increase of population, wealth and business in the First Circuit, soon rendered it necessary to relieve the Circuit Judge from his duties in equity, and a Vice Chancellor was appointed. His court overflowed with business, and an Assistant Vice Chancellor was created. The Superior Court for the city of New York has been organized since the adoption of the constitution, and two Judges have been added to the Common Pleas Bench; and yet only a year ago all these courts were overrun with business.

A dearth at the present time may enable them all to clear their calendars—but that would not be a test of their capacity to despatch the fair average business of the community.

A like increase of population, &c. in the Eighth Circuit created a Vice Chancellor to relieve the Circuit Judge, and we are informed that the same necessity exists in the Second Circuit, although the judge of that circuit is distinguished for his learning and capacity to despatch business.

Now it can hardly be necessary to allude to the evils of judicial delay, or to repeat the trite remark that long delay in its administration is next to a denial of justice. There are those who question whether an inefficient judiciary is not worse than none at all. They allege that parties would abandon their claims advantageously, rather than seek, under such discouraging circumstances, to enforce them; or that they would rig themselves in some form, by arbitration or wager of battle, if there were no hope of justice from the state. But that to be enticed into litigation, with the hope of a tolerably speedy decision; to pay money largely to enforce a right, and then to have half a generation pass away, to lose half of one's life of energy, before a final decision upon one's claim can be had, is a mockery of justice, not to be tolerated in a Christian country.

This has been deeply felt by all classes of the community, and various efforts have been made to remedy the evil. Some years ago a committee, consisting of three of the most eminent jurists of the state, deliberated upon this subject and reported to the legislature; and that body has several times attempted to amend the Constitution so as to provide a better judicial establishment, but the attempt was not seconded by a succeeding legislature.

Influences have ever been at work to prevent the effectual action of that body; and enough is known of these influences to warrant the assertion, that we cannot reasonably hope from the legislature any effectual reform in the judiciary, and that a convention alone will accomplish it.

When that convention shall sit, we may have something to urge concerning the Court for Correction of Errors; as that, an almost purely lay tribunal, open to political influences, may be improved in its organization. A recent decision of that Court, in the case of the will of an admitted idiot, sustaining it, and substantially holding that human intelligence is not necessary to qualify a person for bequeathing an immense estate, and this too by a division and vote almost purely political, is rather an alarming commentary upon the fitness of that tribunal as a court of last resort.

Something also might then be urged in reference to the power and patronage of the Court of Chancery, wielded by one man, and that man not always the fittest, who by his mere will, controls the destinies of millions of his fellow citizens, exerting an immense power unknown to the common law, and by many supposed to be incompatible with the entire spirit of our institutions.

There are those, too, who may wish to urge a reform of our courts of common law to the old Nisi Prius system, which has been so eminently successful in England, in the courts of the Federal Government, and formerly in this state before the present Constitution. And perhaps an union may be suggested of the tribunals of law and equity, and an attempt be made to abolish the distinction between law and justice. But, however it may be, for the present we are only concerned to show the necessity of a Convention.

E. P. H.

RESTORATION OF POWER TO THE PEOPLE:
ABOLITION OF SPECIAL LEGISLATION.

A Convention is necessary in order to restore to the people various powers at present usurped by the Legislature.

The people ought to take under their immediate control, whatever interests they can conveniently manage. A community may be so small, that representation becomes unnecessary; and in such case, the primary action of the people must prevail. The

relation of representative and constituent, involves a departure from the democratic principle, and can only be upheld by necessity. Whatever can be done by the principal, ought not to be delegated to an agent.

A republic is but an approximation to the best kind of government, and is the result of extensive territory. "The true distinction," says Mr Madison, "between democracy and a republic is this—that in a democracy the people meet and exercise the government in person—in a republic they assemble and administer it by their representatives and agents. A democracy consequently, must be confined to a small spot. A republic may be extended over a large region." That "small spot" is a town, which may be rendered a "green spot" in the great desert of the representative system.

It is both the right and the duty of our citizens to retain to themselves for their direct and individual exercise, whatever power they can exert within the limits of the towns and counties. Every departure from this, every function yielded up by the people, augments the great central power of the state, where are united the executive and legislative branches of government, and where impure influences are brought to bear upon the enactment and administration of the laws.

Every step towards this centralization is an approach toward aristocracy—a departure from the democratic theory; and step by step, as we proceed in this direction, the influence of government becomes less and less pure, until finally the state is corrupted, while at the same time the people themselves are honest and patriotic. This is a sad commentary upon the representative system—but it is just—and arises mainly from its abuses, which may be corrected.

Let us not then despair of the republic, but proceed to set the house of state in order. Let us restore to the towns and counties all power of legislation within their respective limits, which can be properly exercised there. Abandon to them all local legislation.

Let the towns legislate as a pure democracy, in the primary assemblies of the people. Let the counties legislate by their boards of supervisors. By this means the necessity for local and partial laws by the central legislature would be answered. The state legislator would assume a new and improved character.

Although elected by a particular district, he would represent not that district more than the entire political body. He would no longer be a mere local agent, sent to obtain some favor or privilege for his immediate constituents. Local regulations being left to the small democracies, all laws emanating from the central legislature would be general in their application. The republican delegate would now mainly represent the great moral interests of the state. Let him be bound to this by the constitution. Compel him to legislate for all men, or for none. Teach him the first idea of law—that it is a rule of action, having some analogy to the laws of nature, being universal in its application, and uniform in its operation—affecting all men at all times alike.

Perhaps he would inquire, before he set out to represent the people, and thereby to represent the great moral wants, the high intellectual action of the community, whether he was exactly the man for the station. He can represent a constituency seeking the privilege of making a new road from Todger's tavern to Five-mile Creek, all in the town of Shungum. He can vote for a law to prevent the alarming encroachments of barbarian wolves upon the civilization of lambs and calves. He can hold

in his hand petitions from his townsmen, asking the privilege of raising money by taxing themselves to build a bridge over Sacandaga Creek; or vote for a law with the intelligent design of giving time to a town collector to get in a tax. He can pledge himself to get a bank in his county—nay, he can receive pledges from other delegates to go for his measure in case he will support theirs. But strip him of these petty functions—elevate legislation to its true position—let it bear sway over the high moral interest of the community, and let its influence be enlightened, equal, universal, and will not his constituents demand higher qualities in their representative than he possesses?

The lobby, too,—that long established and interesting feature in legislative beauty—the lobby—where would it be found under a system of general legislation? Meek witness of the labors of legislative love, where wouldst thou lay thy pious head, now that it could no longer nestle in the bosom of the legislature?

This union of the special legislator and the lobbyist has been too sweet to last forever. The attachment has no parallel except in the friendship of Damon and Pythias. Have they not been lovely in their lives? So in their deaths, under a reformed constitution, may they not be divided! E.P.H.

RESTRICTING EXECUTIVE PATRONAGE: APPOINTING POWER.

In pursuing the idea of restoring to the minor democratic bodies all the functions which have been improperly yielded up to the central government, we must not omit to consider the appointing power.

Who has not lamented the spectacle presented at Albany, upon each successive triumph of a political party; the rush for office—the scramble for spoils—the unanimous effort of the victors to obtain the reward of their patriotic labors—the far from unanimous opinions as to whom they belonged—the threats of removal toward upright public officers to make place for the leaders of the victorious party, the bench itself not being too sacred for the invasion of the vandal horde of office seekers—the creation of new offices to satisfy the love of place—the Executive mansion usurped by the office-seeking throng, and the rightful, but unhappy occupant, to save his health and life from the oppressions of his friends, driven to refuge in bars and bolts; who has witnessed the succession of these scenes as one party triumphed over another, and not wished from his inmost soul that it were far otherwise, and longed for the application of a strong and efficient corrective? The difficulty is obvious enough—and the remedy equally plain.—As the chief corruptions of the legislature arise from the surrender to that body by the towns and counties of a portion of their legitimate power, so the mischiefs of the Executive department just alluded to, arise mainly from a like surrender to that branch of the government, of the power which ought to remain with the people—to wit, the power of appointment to office. The remedy consists in reducing the number of officers; and of those that remain, in allowing the people to elect as many as possible.

As to this reduction: Not long ago, auctioneers, whose pursuit is purely one of business, were installed into office, and required an appointment from the state. In the slow march of reform, this was at length abolished; but we still retain inspectors of commodities, weighers, measurers, and a tribe of such like offices, having relation to the ordinary business of life, and, in the eye of a true political philosophy, exercising a mere private

function. We cannot multiply instances, and for want of space must generalise. We say then, that none but a function purely public can properly be clothed with office. What is common to all men—a mere matter of pursuit or business—whatever can be done by private individuals as well, or nearly as well as by official persons, must be left in the hands of the private citizen. A public function must owe its existence to a clear public necessity—if it be created without this, there is legal usurpation.

Acting upon this rule and guided by the light of experience, the number of offices can be greatly reduced—so low, indeed, as to render the Executive far less formidable as one branch of the central power.

Of the offices that remain, let as many as practicable be filled by the people themselves.

All town offices have at length become elective—yet before the present constitution, Justices of the Peace were appointed by the state—and slowly and timidly did our statesmen consent to give this appointment into the hands of the people. The experiment works well—the town officers are the most faithful of any—because their responsibility is the more immediate. But there are various county offices, such as Surrogates, Judges, &c., who still receive their appointment from the central power, and this draws a swarm of office-seekers around the Executive, who lavish praises on their friends and curses on their foes, and who kiss the toe of state with a reverence worthy of a purer and loftier devotion.

This it is which creates friendship for or antipathy to the Governor—which assists to elevate one power of the state, and degrades both government and people.

Here arise the false eulogist and the fierce slanderer in the successful and disappointed applicant for office.

The corrupt magistrate finds numerous apologists and defenders in the recipients of his favors—while the good one is forever condemned by the disappointed office-seeker. There is no just and impartial criticism of public men and measures. It has been aptly said “that the Plague and Small Pox would have eulogists if they had place and pensions to bestow”—and we are informed that the Savior of man was deserted by a portion of his followers, when the miraculous feast was ended.

Let it ever be borne in mind that both the legislative and executive functions, naturally and of right belong to the people, to be exercised in their primary assemblies—that so much of both these functions is to be retained by the people, as the necessity of their territorial limits does not compel them to relinquish; and that representation, whether by the legislature or the executive, ought only to be resorted to, when the citizen cannot conveniently act in person. Keeping this simple principle in view, let any one examine the provisions of the present constitution and statutes, and they will be found to embody a vast system of usurpation of the rights and sovereignty of the people.

Let us then begin the great work of reform by restoring the dormant, but not lost sovereignty of the people. Let our citizens cling to it in the towns and wards, and there hold on to every function of government that can properly be exercised within those limits; next in the counties, still keeping power as near home as possible, where they can control and keep it pure; then, as if unwilling it should go far from them, still creating one larger district as a resting place, to retain whatever they can from the great central vortex of the state; and at last, reluctantly moved to it only by an imperious necessity,

delegating to the central officers of state so much of the powers of government as the people from their position and circumstances cannot exercise at home. Then and not till then shall we have tested the great principle of democracy—which, emanating from the laws of nature and being established in the very constitution of the human mind, it is as safe to put into practice, as to breathe the vital air. Then and not till then, will our poor mimicry of foreign institutions cease, and we be worthy of the name of freemen. For as yet, the people have been the dupes of governors and legislators, and only the greater dupes for thinking all the while that they governed themselves.

E. P. II.

OFFICES—AND THEIR EVILS.

It is readily seen that public office is either burdensome to the state or the incumbent of it—to the people, if the compensation be full; and to the individual if it be otherwise. It ought, therefore, only to exist in a case of plain public necessity. We have said, elsewhere, that it ought only to be created to discharge a function of purely public character, but this is not our entire view.

By holding up official salaries and perquisites as a temptation to our citizens, we induce them to relinquish their private pursuits and to become dependent upon the public favor for means of living. We thus create a rapacious horde of professional patriots, who strive to be pensioned upon the public treasury for life. But “rotation in office” renders this impossible; other aspirants to popular favor get into their places, and they retire offended with public taste, and complaining of popular ingratitude. Now, few men leave office in a healthy condition for ordinary business. Public applause has ministered to their vanity—the possession of power has inflamed their pride, and in a conflict of emotions unfavorable to the sober application of the man of business, they remain irresolute and idle, awaiting an opportunity to regain their lost offices. After a season, which want has made appear long and dreary, the time arrives when they can strike for office and for bread, and those who are successful are again saved temporarily from hunger and despair. Every man of observation can call to mind many instances of the ruin of families, once in prosperous circumstances, on account of their head being tempted to take office. However much it may be sought after, scarcely one office in a hundred but it is better to reject than to accept; and whoever takes it before he is prepared to retire from business, will have occasion to regret it as an act of folly.

Office then in general is an evil to the incumbent; and he can derive no appropriate reward for its acceptance, save in the consciousness of having honored it by a just and enlightened discharge of its duties, with a single eye to the public weal.

Are we not urged then by every consideration of justice and expediency to reduce the number of offices to the standard of public necessity, and to guard against their creation at the will of the legislature?

Offices should be created by the constitution always, and never by statute.

If experience has not taught this, then have we not profited by years of observation of the corrupt exercise of legislative power. We owe a vast number of offices to the sheer corruption of political parties, which have created them merely as partisan rewards. It has been long incorporated into the trading politician's creed, that he must have a plenty of offices with which to stimulate his creatures to do his work; so that after the shouts of vic-

tory have died away, and he, in rewarding the veterans in his ranks, has absorbed all the offices in existence, and even compelled some holders of office to divide their salaries with a worthy and necessitous brother, he casts about him to see by what new offices to be created immediately, he can recompense the services of his still unwarded followers. New courts are created; old courts are adorned with new judges, or assistants; and thus he continues the creation of offices until the chief priests of his faction cease to clamor for spoils.

Let a convention deeply imbued with a true political philosophy examine into the public wants and determine what public functions must exist in the state; let it name so many officers as will discharge these functions, and prohibit the legislature from adding unto them. It is probable that the present number of officers would by these means be reduced one half.

By a law passed at the last session of the legislature, the offices of Commissioner and Inspector of Common Schools were abolished, and one officer, a Town Superintendent, was substituted, upon whom were devolved these powers and duties. This dispensed with six officers for each town and created one in their stead; thus ridding the state of an army of about five thousand officers, by this act alone.

Recently also, the powers of commissioners of deeds for the country have been conferred upon Justices of the peace; but the one hundred commissioners for the city of New York remain—and we believe they are still retained in other cities. These officers can be dispensed with, and their powers devolved upon public notaries and other officials.

The surrogates for the country counties, and the judges of the courts of common pleas can also be dispensed with—and one county judge, to be elected by the people to exercise the powers of the former, can be safely substituted. This would dispense with nearly two hundred officers.

We might indulge in further examples, but enough is already presented to open the enquiry whether we cannot with decided public benefit rid ourselves of a vast number of offices which owe their existence to no public want but to the love of distinction or emolument, and which have hitherto been wielded in the hands of politicians as incentives to factious zeal, and as rewards for electioneering services.

In the ratio of diminution of offices and their emoluments will be the decrease of sordid electioneering. The scandal which attends our political campaigns, all men regard as a reproach to the country; and a wide-spread distrust of the permanency of our political institutions has arisen from falsely supposing that the outrages which attend our general elections are necessarily incident to democratic government. But office and its emoluments are the chief causes of the evils in view; and since it is far easier to remove temptation from human weakness, than to train mankind to withstand it, it is better to diminish the number and emoluments of office, than to allow the temptation to remain and to endeavor to lecture our fellow-citizens into forbearance and moderation in a contest for official stations. The latter course has often proved abortive; and while we have been rendered unhappy at each returning election on account of the evils alluded to, we have subjected free government to the censure and ridicule of foreigners.

During the heat of our last Presidential election a Parisian editor announced that he had received a file of American newspapers, and regretted exceedingly to find by them that the two candidates for the Presidency were the greatest rascals in the country!

E. P. H.

PRIVATE RIGHTS vs. CORPORATE MONOPOLIES.

It is provided by the present constitution that private property shall not be taken for public use without just compensation; and here the provision stops.

It is unquestionably necessary that the power of appropriating the property of the citizen to the use of the state in case of public need, resides in government. But it has been greatly questioned by our ablest jurists whether the state can delegate this right of eminent domain to individuals and corporations for the purpose of constructing works of public improvement as a matter of private gain.—The state chooses to stand aloof from a canal, turnpike or railroad, and a number of capitalists obtain a charter for the purpose of constructing the work, which, when completed, is to enure to their exclusive benefit. They require the land of private owners all along the line of their work—and by their act of incorporation it is provided that they may take and appropriate any body's land which is convenient for their use, and may compel the owner to relinquish it upon compensation.

Before the act, the corporators had no more right to take the land without the owner's consent than they had to rob him on the highway; but the legislature has now authorized them to seize the estate because they are constructing a work which the state might have undertaken. Now all publicists agree that the state cannot take from one man his estate and confer it upon another on any terms—nor can it compel one man to sell to another. The state can only take the property of the citizen to itself, for its own sovereign use, upon payment of its value. The citizen yields only to the high necessities of the state. In a proper case any good man will yield cheerfully to the public demand—and what he would do spontaneously, an indifferent or selfish man may be reasonably compelled to do.

But why does the state compel any citizen to yield his estate to a few capitalists to promote the ends of private enterprise? When their work is completed, is it not private property, used for private gain? Grant that the public are accommodated by the work—so are they by the milkman—and shall he demand to pasture his cows wherever it may be convenient for him? Grant that the work is a public benefit—so are the waters of Saratoga—and shall we incorporate a company to send them to every man's bedroom in the morning, and authorize them to seize the springs and appropriate them for that purpose? Grant that the public require these works—so do they require hotels—and theatres and churches—shall the law appropriate the private citizen's estate for these? Cannot entreprising men who intend to get rich by accommodating the public, bargain for what they require? Shall the law compel an owner to sell, without a voice in the matter as to place or price? The old doctrine was thought to be that the state could take a citizen's property to itself in cases of public necessity. The doctrine of the legislature and courts of this state is, that *private corporations* may take the citizen's property whenever they require it to construct works of public convenience, in view of private gain. Where will this doctrine stop?

In a sister state, the owner of a mill-site, who would not build a grist-mill, has been compelled by law to give up his land to one that would, and this has been approved in an opinion delivered by one of the members of the highest court in this state. It is true, there were some ameliorating circumstances in the case alluded to, for, in the neighborhood where this happened, there had been great complaint that at the existing mills the grists were

not ground "in turn," and the boys came home to their venerable parents complaining of the injustice and favoritism of the millers. A keen sense of public injury was awakened, and it was enacted by the legislature that the vacant mill-site should be wrested from the private owner, provided that, at the mill to be built thereon, the grists should always be ground in turn. This rendered it so great a public benefit, that the taking of the site was deemed an appropriation for the public use! From such examples of legal insanity it behooves us to take warning. It is obvious that the right of property is in great danger of rude invasion from such loose constructions of the constitutional provision in question. It is high time that it should be enlarged for the protection of private right from the plausible invasions of courts and legislators. Let the Constitution define what is intended by the "public use," and in doing so prohibit the delegation of the right of eminent domain to private persons and corporations. It so much cannot be done, at least let some proper safeguards be thrown round the owner of property, by awarding him an appropriate tribunal and a fair hearing, before he shall be stripped of his estate.

This power has also been delegated by the legislature to municipal corporations, and in all our incorporated cities and villages it has been freely exercised, in the taking of property for the opening and improvement of streets, squares, &c., in the progress of which greater oppressions have arisen than the most arbitrary monarch could inflict without provoking revolution or incurring assassination.—But democrats have become famous for their tame submission to the abuses of government: perhaps they submit the more freely to injustice because they suppose they may at any time put an end to it. In our judgement, there are no effectual means of preventing abuses of this sort, but by constitutional provisions against them.

It is related of some unhappy owner of a lot in this city—the Common Council having the power to assess lots for improvements, to sell them and to appropriate the avails to the payment of the assessment, and to pursue the owner for the deficiency by process against his estate and person—that upon his lot being sold to pay for estimated benefits, and a large deficiency being left unpaid, he fled precipitately from the city, and took refuge in a neighboring state, to avoid imprisonment for the only offence of having been a respectable freeholder in the fair city of New York, and assessed for benefits which ruined him!

In the case of the delegation of the right of eminent domain to municipal corporations, it is worth while to enquire whether some safeguards cannot be adopted to defend the owners of town and village property from the arbitrary acts of their boards of legislation. In this case, is it not well to provide by the constitution that no property shall be appropriated nor assessment made for these improvements, until a jury of twelve disinterested freeholders shall hear the matter and determine that the proposed work can be entered upon consistently with the rights and interests of the persons whose property shall be affected by it?

The Constitution is silent as to how the compensation to the private owner shall be ascertained, leaving it to the legislature in each case to provide the mode of assessing his damages. In most instances, a provision is made for three appraisers, with an appeal to the Chancellor or a Vice Chancellor, who will not, in general, review the case, to see whether the damages are proper in amount.—In hardly any case is a jury resorted to. In England, an appeal lies from an assessment by apprais-

ers to a jury in all cases. But this is only one of the many cases in which the English have advanced before us in legal reform.

Moreover, scarcely any of the statutes provide with sufficient clearness, and some of them admit of the contrary construction, that the compensation shall be paid *before* the property shall be taken; nor do they provide in many cases that the costs and expenses of the private owner shall be paid by the takers of the estate. In some instances the most flagrant injustice has been practiced in the absence of these reasonable provisions.

Let the Constitution be so amended as to provide that private property may be taken for the public use upon just compensation, to be ascertained in all cases by a jury of twelve disinterested free-holders selected from the vicinage, who shall hear testimony and view the property in question; from whose decision an appeal to some appropriate court of record to be named by law shall lie for the purpose only of correcting any error in law into which the jury may have fallen—which compensation, when finally ascertained, shall be paid in all cases to the claimant, together with his costs and expenses in defending against the procedure before the property shall be appropriated or entered upon for use. And let it be further provided, that the right of eminent domain shall not be delegated to private persons or corporations without a provision for the determination by a like jury that the private owner ought to yield up his estate for the purpose of the contemplated work, upon being compensated.

A similar provision ought to be made applicable to municipal corporations.

When the legislature grants charters for the purpose of constructing public works, the points of termination only are considered, the particular line of location being left in the discretion of the companies. In establishing this, they consult their own interest or convenience, irrespective of the owners of the property with which they interfere.—Numerous cases of great hardship arise, where the company ought to change their route, or even forego their work altogether, rather than the individuals should suffer the wrong sometimes inflicted. It may be said that the owners can be compensated in any case. To which I answer, there are some injuries for which money cannot atone. There are consecrated places in the domain of many a man, which are as sacred to him as life itself. The grounds on which he has lavished a fortune in embellishing to his taste—the homestead of his ancestors—the cemetery where repose the ashes of the sainted dead—the groves himself has planted—may not be purchasable by voluntary means, and cannot be said to be paid for at any price, if the owner wishes to retain them.

At any rate, since the legislature in granting the charter has not pretended to decide where the line of the work should be located, and of course has not examined into the particular hardships it might inflict upon the proprietors of the soil, and since the corporations only consult their own convenience, and always claim that it is necessary for them to take the lands which are most convenient for their use, and since the courts have not in a single instance to our knowledge, compelled them to change their route or to concede a point on complaint of the private owner, it would seem to be reasonable that the latter should have a tribunal to which he may resort, and in a proper case prevent an outrage upon his rights, which are as sacred as any public work can be. No more fitting tribunal can be adopted than a jury of freeholders of the vicinage—the best tribunal ever devised by human wit for determining a question of simple justice between man and man.

E. P. H.

